

Elder Abuse Task Force – Subcommittee on Legislative Changes

****Proposals from 10/2 meeting****

I. Administrative

- a. Amend 235B.2(5)(a)(1) and (3) (the definition of abuse) to remove the caretaker requirement
- b. Amend 235B.2(4) (the definition of dependent adult) as follows:
“Dependent adult” means 1) a person eighteen years of age or older who is unable to protect the person’s own interests or unable to adequately perform or obtain services necessary to meet essential human needs, as a result of a physical or mental condition which requires assistance from another, or 2) a person sixty years of age or older, or 3) as defined by departmental rule.

Issue: what age should be used for this definition?

Issue: Do we change the name of “dependent adult abuse”? If so, to what?

- c. Move 235B.20 (criminal penalties); amend, move or remove 726.7 (wanton neglect of a resident of a health care facility); amend, move or remove 726.8 (wanton neglect or nonsupport of a dependent adult); amend, move or remove 726.3 (neglect or abandonment of a dependent person); move 235B.12 (failure to report; should also include 235E.2(9)) to new criminal chapter that deals exclusively with adult abuse.

Issue: some of these code sections are somewhat duplicative and range of level of offenses seem almost random.

- d. Amend 235B to require DHS to: inform the reporter of reasons for a rejected intake; refer all intakes to appropriate LE agency, AAAs, ADRC, LTCO with documentation of referral; provide a copy of all intakes to the AG’s office; refer all rejected intakes to the local AAA.

- i. Issue: coordinating this recommendation with the draft proposal for “single point of contact” proposal.

- e. Amend 235E.2(6) to require DIA to inform both the appropriate county attorneys and the AG’s office of any reports of dependent adult abuse

- f. Amend 235B.3(4) to make financial institutions mandatory reporters.

Issue: Does this need to be a separate bill from other proposed legislative changes?

- g. Define “financial institution” for 235B.

- h. Create a registry of POA, including registration of POA when the principal becomes incapacitated.

Issue: this needs fleshed out and should it be different from last year’s proposed legislation? If so, how?

- i. Consider amending 235B.2(5) definition of “abuse” to include emotional/psychological abuse

Issue: look to 42 USC 3002 or 235E for guidance

- j. Consider amending 235B(5)(a)(1)(c) to broaden the definition of financial exploitation for the purpose of reporting abuse by mandatory and permissive reporters.

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Issue: this needs fleshed out.

- k. Explore mechanisms for the collection and analysis of data on adult abuse.

Issue: this probably should not be on the law subcommittee, but considered by Centralization or Services subcommittees

- l. Expand 235B.1 MDT powers and functions as noted in Simmons/Welsh report point 6.

II. Civil

- a. Support the adoption the Uniform POA act as approved by the Iowa State Bar Association

- b. Create an Elder Abuse petition for relief to obtain a protective order (like domestic abuse civil orders for protection) and/or authorize court issuance of protective/restraining orders in cases of elder financial exploitation and the freezing of assets in cases of elder financial exploitation

- c. Authorize recovery of actual damages, punitive damages, attorney's fees and court costs in a civil action for financial exploitation and that allows a cause of action to survive the death of the victim/plaintiff.

- d. Consider amending Iowa Code Section 633.535 to deny an inheritance to financial exploiters

Issue: is this a priority?

- e. Amend Iowa Code Chapter 633 to require background checks for prospective conservators so that the Probate Court can determine whether they have been convicted of a criminal offense that would disqualify them from serving as a conservator taking all relevant factors into consideration.

Issue: only require a check of Iowa criminal records via Iowa Courts Online or require a federal check? The federal check would be more comprehensive but would require fingerprints, etc. Do we start with an Iowa check with the idea of amending in the future to require a federal check?

- f. Fund for the second and third years of the Guardianship/Conservator Monitoring and Assistance Pilot Project.

III. Criminal

- a. Amend Iowa Code Section 714.1 (theft) to include new offense of financial exploitation of a senior

Issue: need a definition

- b. Amend Iowa Code Section 714.2 (degrees of theft) to impose enhanced penalties to financial exploitation of a senior

Issue: if the penalties are too high, this might not get passed

- c. Create new criminal code chapter that criminalizes adult abuse as noted above in this outline.

- d. Any definition of "financial exploitation" should not have the requirement that the perpetrator must have so acting for their own profit.

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- e. Consider adding definitions to financial exploitation for “implied consent”, “undue influence” and “duress”
- f. Amend Iowa Code Chapter 915 and 815.10 to allow a guardian ad litem to be appointed on behalf of a senior who is a prosecuting witness or victim of an indictable criminal offense to advocate on the senior’s behalf.
- g. Enact legislation reducing the barriers to the prosecution of elder financial exploitation, including an extended statute of limitations for financial exploitation, etc.

Issue: need a determination of exactly what should be included.